No. 92-1648

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Supreme Court of the United States

October Term, 1992

Ann Richards, Governor of Texas; Carol S. Vance, Jerry H. Lodge, Joshua W. Allen, Sr., Ellen J. Halbert, Clarence N. Stevenson, Allan B. Polunsky, R.H. Duncan, Sr., Gilberto Hinojosa, John R. Ward, Members, Texas Board of Criminal Justice; James A. Lynaugh, Executive Director, Texas Department of Criminal Justice,

Petitioners,

v.

John Landaus, Harris County Judge; El Franco Lee, Jim Fonteno, Steve Radack, Jerry Eversole, Harris County Commissioners; Johnny Klevenhagen, Harris County Sheriff,

Respondents,

v.

Lawrence R. Alberti, Jimmy E. Collins, Henry C. Langer, José J. Pina, II, Pat Reed, Wesley Sellers, individually and on behalf of all others similarly situated,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF AMICUS CURIAE FOR THE STATES OF LOUISIANA, ALASKA, ARKANSAS, CALIFORNIA, COLORADO, IDAHO, INDIANA, MISSISSIPPI, MISSOURI, NEW MEXICO, NORTH DAKOTA, SOUTH DAKOTA, WEST VIRGINIA, AND WYOMING, IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI BY ANN RICHARDS, GOVERNOR OF TEXAS AND ALL OTHER PETITIONERS

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INTEREST OF THE AMICUS CURIAE

The Amici are all States. The various Attorneys General, who have joined in this Brief Amicus Curiae, provide legal representation of their respective States and state officials. The particular legal questions presented in the Petition for Writ of Certiorari to This Court posit significant, unanswered questions of federalism; the Tenth and Eleventh Amendments; abstention; liability for unconstitutional conduct; and the scope and nature of remedial injunctive relief in state prisons and local jail conditions of confinement suits. The answers to the questions presented will have a nationwide impact on all litigation requesting as well as imposing remedial injunctive relief on state officials for alleged unconstitutional conditions of confinement in local jails and the authority of lower federal courts to adjudicate matters of governmental structure and organization and of fiscal and public policy within the Several States.

The resolution of the questions presented in the Petition for Writ of Certiorari involve questions of nationwide importance which will directly impact the structure and organization and fiscal and public policy choices within the Several States. The Amici States urge This Court to grant a Writ of Certiorari in this case and set the matter for argument before This Court.

SUMMARY OF REASONS FOR GRANTING THE WRIT

In the instant case, the Fifth Circuit violated the principles of federalism and Article III of the Constitution

when it served as arbitrator of a dispute between the State of Texas and its local governmental entity – Harris County. The Fifth Circuit violated the Eleventh Amendment when it determined how the State of Texas should function under the laws of the State of Texas. The failure of the Fifth Circuit to abstain from answering unsettled questions of Texas state law violates the principles of "Our Federalism" contained in the Tenth and Eleventh Amendments. The imposition of liability on Texas state officials for violations of the Cruel and Unusual Punishment Clause of the Eighth Amendment by Harris County officials over whom the Texas state officials had no authority or control under state law, violates This Court's standard of culpability set out in *Wilson v. Seiter*, ___U.S. ___, 111 S.Ct. 2321 (1991) and the requirement of causal connexity under 42 U.S.C. §1983.

Amici do not feel that the federal courts can sweep away the substance of state law, settled or unsettled, nor create state law on the one hand, while on the other hand claiming to follow state law in finding a federal constitutional violation. In the instant case the Fifth circuit swept away Texas state law in regard to imposing a remedy; created new Texas state law in terms of determining the identity of constitutional violators; and then claimed it relied on Texas state law in finding a violation of the Cruel and Unusual Punishment Clause of the Eighth Amendment. Amici asserts that, in this regard, the opinion of the Fifth Circuit was incorrect. This Court should correct the errors committed by the Fifth Circuit so that these errors will not be repeated in the Fifth or any other Circuit. Clear guidance is needed on the issues raised in the Petition for Writ of Certiorari.

The questions of law presented for review need to be resolved by This Court in order that a uniform application will occur in the lower federal courts. These questions go to the very heart of our federal system of government and the dignity of the Several States. The Amici States do not feel that federal courts have the constitutional authority to restructure the fiscal and structural relationship between a State and its local governmental entities. Nor does a federal court have the authority or expertise to dictate to a State the public policy within that State. While federal courts clearly have the authority to determine if a provision of the Constitution has been violated, they do not possess the authority to impose liability on state officials for acts which are the responsibility of local officials under state law. The opinion of the Fifth Circuit in the instant case does this. This is of nationwide interest and directly impacts almost all so-called institutional reform litigation decided, pending or that may be filed in federal court.

The opinion of the Fifth Circuit violates provisions of the Constitution as well as prior opinions of This Court. It also creates conflict among the circuits. The issues raised in the Petition for Writ of Certiorari affect the jurisdiction of federal courts, our federal system of government, and every State. Therefore, there exist special and important reasons for granting the writ.

REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED TO RESOLVE IRRECONCILABLE CONFLICTS BETWEEN THE CIRCUITS OVER (A) THE ROLE OF FEDERAL COURTS IN DECIDING DISPUTES BETWEEN LEVELS OF GOVERNMENT WITHIN THE SEVERAL STATES AND (B) THE SCOPE OF THE TENTH AND ELEVENTH AMENDMENTS.

Amici agree with the reasons for granting the writ asserted in the Petition.[1] These will not be re-asserted here. Amici urge in addition the reasons set out below.

In the instant case, the Fifth Circuit interjected itself into the center of a political dispute between the Legislature of Texas and the counties of Texas over which political entities within Texas should bear the costs associated with housing convicted felons.[2] The Fifth Circuit, in its opinion, resolved this political dispute to the advantage of Harris County. The federal court's authority to determine the existence of an Eighth Amendment violation exists; however, the Fifth Circuit had no authority to

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[1] See: Petition for Writ of Certiorari pp. 15-20

[2] The procedural history and facts of the instant case are outlined in the Petition for Writ of Certiorari at pp. 6-15 and will not be repeated here. It is, however, important to note that Harris County officials, who were the original defendants in the District Court, brought the Texas state officials into federal court on a Third Party Complaint. The plaintiff inmate class did not sue the Texas state officials in their original complaint in the District Court. Id. pp. 6.

resolve the dispute between the State of Texas and its local governmental entities.

The Constitution does not dictate to the States the type of governmental structure which must be established by a State. This includes the relationship with a state's own local governmental entities.[3]

Federal courts are simply not granted the authority under Article III of the Constitution "to adjudicate an internal dispute between a local governmental entity and the very state that created it." *Kelley v. Metropolitan County Board of Education of Nashville and Davidson County, Tennessee*, 836 F.2d 986, 998 (6th Cir. 1987), *cert. denied*, 487 U.S. 1206 (1988), *See also: Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819). Since a local entity is a creation of a State, the local entity lacks standing to sue its creator State in federal court. A State cannot sue itself in federal court.[4]

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[3] The Constitution only requires that the States have a republican form of government. Neither Congress nor the federal courts can dictate to the Several States how to organize their internal governmental structures, nor can they define the parameters of the relationship between a state and its local governmental entities. See: *Coyle v. Smith*, 221 U.S. 559 (1911). The Tenth Amendment reserves to the Several States the authority to structure themselves. See: *Coyle v. Smith*, 221 U.S. 559 (1911) and *Presley v. Etowah County Commissioners*, ___U.S.___, 112 S.Ct. 820, 832 (1992)

[4] See: *Coleman v. Miller*, 307 U.S. 433, 441 (1939); *South Macomb Disposal Authority v. Township of Washington*, 790 F.2d 500 (6th Cir. 1986); *Town of Ball v. Rapides Parish Police Jury*, 756 F.2d 1049, 1051 N.1 (5th Cir. 1984) (and cases cited therein).

How a State organizes and structures itself is guaranteed to the Several States in the Tenth Amendment. Since a governmental entity's ability to organize and structure itself is an act of sovereign authority of that entity, a federal court is prohibited from adjudicating a dispute between a State and its local governmental entities. See: *Presley v Etowah County Commissioners*, ___U.S.___, 112 S.Ct. 820, 832 (1992).[5]

This case involves the fiscal and taxing policies, public safety and local initiatives in regard to the criminal justice system in Texas. It is clear that a finding of liability and the issuing of injunctive relief did not require that Texas state officials be brought into the lower court.[6]

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[5] Federal courts are prohibited by the Eleventh Amendment from instructing state officials on how to comply with state law because that would conflict directly with the principles of federalism that underlie the Eleventh Amendment. *Pennhurst State School & Hospital v. Halderman*, 465 U.S 89, 106 (1984). Allowing a federal court to dictate a State's relationship with its local governmental entities would cause an even greater conflict with the principles of federalism that underlie the Eleventh Amendment.

[6] Officials of the State of Texas were brought into this suit by the county that it created in order to protect the fiscal interest of Harris County at the expense of the State of Texas. See: footnote 2, supra.

The officials of the State of Texas were sued by Harris County in order to seek prospective injunctive compensation against them. This type of suit is clearly a suit against the Texas state officials in their official or representative capacities. See: *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 N. 10 (1989). The Harris County officials, therefore, third partied the State of Texas into this suit in federal court. *See also: Hafer v. Melo*, ___U.S.___, 112 S.Ct. 358, 361-362 (1991) and *Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985).

Relief could have been obtained from the Harris County officials, who under Texas state law, were the physical custodians of the plaintiff inmate class. The issuance of injunctive relief, which ordered the State of Texas to pay Harris County, clearly interfered with the governmental structure in Texas.

That portion of the injunction was based solely on the Fifth Circuit's interpretation of Texas state law and was not necessary in order to preserve a federal right. This Court has determined that federal courts should not interfere in the rightful independence of state government in the absence of vindicating a federally protected right. See: *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943). In this case, the Fifth Circuit interfered in the fiscal relationship between the Legislature of Texas and the government of Harris County. The remedy could have been obtained solely from Harris County, leaving it to Harris county to seek redress of its fiscal problem with the Texas state legislature or in a Texas state court.

The Fifth Circuit ruling in the instant case and the case of *Benjamin v. Malcom*, 803 F.2d 46 (2nd Cir. 1986), conflict directly with the holdings of This Court in *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984) and the case of *Kelley v. Metropolitan County Board of Education of Nashville and Davidson County, Tennessee*, 836 F.2d 986 (6th Cir. 1987) *cert. denied* 487 U.S. 1206 (1988). There exists a conflict among the Circuits and a conflict with an opinion of This Court which should be resolved through the granting of this writ.

The Fifth Circuit in its opinion resolved a dispute between Harris County and the State of Texas. See: *Alberti v. Sheriff of Harris County*, 937 F.2d 984, 993-998 (5th Cir. 1991), *cert. denied sub nom, Richards v. Lindsay*, ___U.S.___, 112 S.Ct. 1994 (1992). This violates the Tenth Amendment and Eleventh Amendment of the Constitution, and causes a conflict among the Circuit Courts. The resolution of this issue by This Court is of great importance to every State and local government in this country. For these reasons the writ should be granted.

II.

CERTIORARI SHOULD BE GRANTED BECAUSE OF THE LOWER COURT'S CLEARLY ERRONEOUS AND ILL-REASONED RULING ON ABSTENTION

Amici agree with the Petitioner's reasons for granting the writ on the issue of abstention.[7] These reasons will not be re-asserted here. Amici assert that whether the doctrine is abstention, Article III jurisdiction, or Our Federalism under the Tenth or Eleventh Amendment, the Fifth Circuit, like all federal courts, neither has the authority nor background to adjudicate questions of state law.

It is clear in this case that the state law issue of whether the State of Texas owed money to Harris County for housing transfer-eligible inmates was an unsettled question of Texas state law.[8]

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[7] See: Petition for Writ of Certiorari pp. 20-26.

[8] See: Petition for Writ of Certiorari pp. 10-15.

Article III of the Constitution permits federal courts to adjudicate only certain claims; determining questions of state law is not one of the type of claims listed in Article III.[9]

The Tenth Amendment leaves to the Several States the sole authority to adjudicate such state law claims in their state courts. The Eleventh Amendment prohibits federal courts from adjudicating issues of state law solely on state law grounds when state officials are a party to the suit. See: *Pennhurst State School & Hospital v. Halderman,* 465 U.S. at 106.

It is clear that the Fifth Circuit should have "abstained" from adjudicating the unsettled question of Texas State law, stayed the proceedings in federal court on that issue and certified the question to the state court system in Texas. See: *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 9-22 (1987). Additionally, since the issue at stake is purely a matter of state law, and the federal question could have been resolved without answering the state law question, the state law issue should have been dismissed along with the state defendants. See: *Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800, 817-820 (1976); *New Orleans Public Service, Inc. v. Counsel of City of New Orleans,* 491 U.S. 350, 360-362 (1989) and *Mississippi*

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[9] This case is not based on diversity but rather on a federal claim. While matters involving state law might arise in a diversity case, only the constitutionality of a state law can be considered as arising under a federal claim. Here the issue was not the constitutionality of the state law in question but rather an actual adjudication of what that state law means.

Power & Light Co. v. Mississippi, ex rel Moore, 487 U.S. 354, 108 S.Ct. 2428 (1988).

The reasons why federal courts should not adjudicate state law claims are grounded both in the Constitution and practicality. This Court has pointed out that federal judges are not necessarily schooled or learned in state law. See: *Pennhurst State School & Hospital v. Halderman,* 465 U.S. at 123 N.32.

In this case, the Fifth Circuit based its analysis of Texas state law on an opinion by a Texas state district judge located in Harris County. *Alberti v. Sheriff of Harris County,* 937 F.2d at 997. This state court opinion, however, was never final nor was it reviewed by any higher court in Texas. In fact this state court opinion has been vacated.[10]

Because of the above misinterpretation of unsettled Texas state law by the Fifth Circuit, this case is a textbook example of the practical reasons why federal courts should not adjudicate state law claims. A federal court should either; (1) "abstain" from adjudicating these types of claims; (2) certify them to the appropriate state court system; or (3) dismiss the state claims for lack of jurisdiction.

This Court should grant the writ on these questions because they are important issues of nationwide significance and have not received uniform application throughout the federal court system.

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[10] See: Petition for Writ of Certiorari pp. 14.

III.

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER STATE OFFICIALS CAN BE FOUND LIABLE FOR CONDITIONS IN A LOCAL JAIL UNDER *WILSON V. SEITER* WHEN THEIR RESPONSIBILITIES UNDER STATE LAW FOR INMATES IN A LOCAL JAIL ARE NOT CLEARLY ESTABLISHED.

Amici agree with the Petitioners' reasons for granting the writ on this question.[11] These reasons will not be reasserted here. Amici assert, however, that contained within the question presented for review is the basic issue of who can be held liable for violating the Constitution under 42 U.S.C. § 1983.[12]

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[11] See: Petition for Writ of Certiorari pp. 26-29.

[12] Petitioners have framed this question in terms of liability under *Wilson v. Seiter.* See: Petition for Writ of Certiorari, Question Presented Number 4, pp. i. However, supervisory liability is also an issue under 42 U.S.C. § 1983. See: *City of Oklahoma City v. Tuttle,* 471 U.S. 808, 818-821 (1985) (per Justice Rehnquist with the Chief Justice and two Justices concurring and three Justices concurring in judgment). As stated by This Court, questions of the meaning of § 1983 are jurisdictional in nature and can be reviewed by This Court regardless of their being raised by the parties. *Will v. Michigan Department of State Police,* 491 U.S. 58, 63 N. 4 (1989)

A federal court's instruction to State officials on how to comply with state law is barred by the Eleventh Amendment. *Pennhurst State School & Hospital v. Halderman,* 465 U.S. at 196. Pendent jurisdiction cannot be used to bypass what the Eleventh Amendment specifically prohibits. Id., 465 U.S. at 121-122. Therefore, This Court has already determined that a legal dispute between state officials and county officials over the meaning or application of state law cannot be heard as a pendent state law claim.

Under the clear meaning of §1983 only a "person" who violates another's constitutional rights can be held liable for the violation of a constitutional right. What is equally clear is that a remedy for violating another's constitutional rights can be issued only against the "person" who violated that right. *See*: 42 USC § 1983 and *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 818-821 (1985) (Per Justice Rehnquist with the Chief Justice and two Justices concurring and three Justices concurring in judgment).

In the instant case, a remedy for violating the constitutional rights of the plaintiff inmate class was issued against the State defendants without determining if each of the State defendants were "persons" liable for the constitutional violation. In short, did the Texas officials have a legally imposed responsibility for the unconstitutional conditions of confinement in Harris County's jail?

The "actor" is the "person" liable for violations of constitutional rights. The "actor" who is liable is the "person" against whom the remedy can be imposed under §1983. A plurality of This Court has indicated that the "actor" in cases like the instant one, is determined by looking at state law. *City of St. Louis v. Praprotnick*, 485 U.S. 112, 123-129 (1988) (Per Justice O'Connor with the Chief Justice and two Justices concurring)

Texas state law made the officials of Harris County the physical custodians of the plaintiff inmate class and, therefore responsible for the care and treatment of the plaintiff inmate class while housed in Harris County's jail. *See*: Tex. Code Crim. Proc. Art. 104.002 (Vernon Supp. 1993). Under Texas state law, the officials of Harris

County are the "actors" who are responsible for the conditions of confinement at Harris County's jail, regardless of whom is housed within that jail.[13] Therefore, the "person" who is liable and against whom a remedy can be imposed are the officials of Harris County and not the Texas state officials.

However, the Fifth Circuit ignored the clear dictates of Texas state law and determined that a remedy could be imposed against the State defendants and the County defendants.[14] *Alberti v. Sheriff of Harris County*, 937 F.2 at 993-998. A plurality of This Court has determined that the method used by the Fifth Circuit is improper. *City of St. Louis v. Praprotnick*, 485 U.S. at 134 N.1. This Court, however, has never established what method must be used in order to determine the "actor" who is or can be held liable.

In determining who is the "actor" for purposes of imposing liability under §1983, state law must control. Under §1983 only the "actor" who is the constitutional violator can have a remedy imposed against him. This concept is neither new nor radical. It is a basic principle of fairness that only legally responsible wrongdoers can

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[13] See: Petition for Writ of Certiorari pp. 10.

[14] Louisiana courts have determined that local jail officials – parish sheriff – is the "actor" who is liable for the conditions of confinement at parish jails under Louisiana law and not Louisiana state officials. La. Rev. Stat. Ann. 15:824 (West Sup. 1993), *See also: Langley v. City of Monroe*, 582 So.2d 367, 368 (La. App. 2nd 1991), *Cooley v. State of Louisiana*, 533 So.2d 124, 125 (La. App. 4th Cir. 1988 and *Amiss v. Dumas*, 411 So.2d 1137 (La. App. 1st Cir. 1982). The Louisiana Legislature has for sometime mandated that the Parish Officials receive payment per day per head for each Louisiana state prisoner that is held in a parish jail. La. Rev. Stat. Ann. 15:824B.

be found liable in court and have remedies imposed on them.

The question of law presented here is: How should a federal court determine who is the "actor" for purposes of imposing liability on and a remedy against a "person" under 42 U.S.C. §1983? This is a threshold and plenary question under §1983. This Court should grant the writ in this case to resolve these important legal questions.

CONCLUSION

A writ of certiorari should be granted and this case set for oral argument.

The questions presented for review involve threshold issues of jurisdiction under Article III, the Tenth Amendment and the Eleventh Amendment which have remained unanswered by This Court. The questions presented for review involve answered issues of abstention and/or certification of state law claims which were ignored by the Fifth Circuit. The questions presented for review reflect conflicts among the Courts of Appeals. The result reached by the Fifth Circuit conflicts directly with holdings of This Court. Additionally, the proper test for determining the constitutional violator under §1983 is of nationwide importance.

This Court has an obligation to resolve all questions of the jurisdictional authority of federal courts. This is particularly true when the questions are posed by one or more of the Several States. It is This Court's duty to define the jurisdictional authority of the lower federal

courts. The scope of the federal court's jurisdictional authority should not be left to the discretion of the lower federal courts. The jurisdictional questions posited in the Petition for Writ of Certiorari, including the one posed under §1983, should be answered by This Court. This case presents This Court with the opportunity to answer these jurisdictional questions.

The Amici States believe that the questions presented for review in the Petition for Writ of Certiorari are of grave importance to all States. The Amici States feel that This Court should answer the questions presented for review in the Petition for Writ of Certiorari.

Respectfully submitted:

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